



Wallace Yard Consent Decree - Litigation

Lawrence, Robert

to:

Himmelhoch, Sarah (ENRD), Clifford Villa

08/28/2009 06:02 PM

Cc:

"Lawrence, Robert", "Wurtzler, Gail", "Trueblood, Craig"

Hide Details

From: "Lawrence, Robert" <Robert.Lawrence@dgslaw.com>

To: "Himmelhoch, Sarah (ENRD)" <Sarah.Himmelhoch@usdoj.gov>, Clifford

Villa/R10/USEPA/US@EPA,

Cc: "Lawrence, Robert" <Robert.Lawrence@dgslaw.com>, "Wurtzler, Gail"

<Gail.Wurtzler@dgslaw.com>, "Trueblood, Craig" <craig.trueblood@klgates.com>

History: This message has been replied to and forwarded.

Confidential Settlement Communication

Submitted under FRE 408

Re: Wallace Yard Consent Decree and Litigation

Sarah and Cliff,

I'm not sure whether my e-mails to Sara are getting through the DOJ firewall. Some are returned with a "can't deliver" note. In any event, I wanted to be sure that both of you were aware of the following:

- 1) Neither Gail nor I can waive service for UP. Bob Bylsma, UP's in-house counsel based out of Sacramento, has the authority to do this in certain situations. Bob's number is 916-789-6229. Please advise me if you are interested in Bob possibly accepting or waiving service for UP, and I will give him a heads up that you will be giving him a call.
- 2) Based upon our telephone call with Cliff, Ed Moreen and Nick Zilka yesterday, it appears that we are making good progress towards settlement. The vast majority of the remaining issues appear related to the degree of detail that EPA wants in the RAD drawings and the RAWP, and not on major significant technical differences of opinion. The language in the CD and SOW is final, subject of course to our respective clients final management review and approval.
- 3) As we advised Cliff, Ed and Nick, we think the last set of RAD drawings that we provided to EPA supplied more than enough detail for the Agencies to understand, review and approve the response actions that the RRs will be undertaking, and to oversee these actions in the field. Nevertheless, in the interest of settlement, we are willing to provide more detail so long as EPA understands that it will take time to undertake the necessary field work and to revise the RAD drawings appropriately. EPA has indicated that the level of detail set forth in the Wallace Mullan Branch Trail of the Coeur d'Alene CD RAD drawings may be appropriate in certain instances. But those Trail RAD drawings took well over a year to develop (sometimes even longer) often involving many revisions. Further, the Trail of the Coeur d'Alene's was a more complex project; the level of detail in those drawings is not necessary for the Spur Line drawings. In any event, to prepare RAD drawings like those under the Wallace Mullan Branch CD for the Trail of the Coeur d'Alenes would take a minimum of three to four weeks. This could be done, but in our view is unnecessary and would result in further delays in lodging of the CD. As a compromise, we suggest that the parties agree that some

level of additional detail between that set forth in the Coeur d'Alene RAD drawings and our current set of RAD drawings is sufficient and would give the Agencies sufficient detail to better understand the work that will be done and to oversee this work. The more detail that is required, the more time it will take for us to get the drawings to the Agency; the less detail required the more quickly we can deliver the RAD drawings.

- 4) UP cannot sign the Consent Decree until the Parties have come to final agreement on the RAD Drawings that will be attached to the CD at the staff level, and UP management has reviewed and approved the final CD. Because this will take some time for the reasons described above, we suggest that the U.S. file a motion advising Judge Lodge that we are making good progress towards settlement, and requesting that the Judge stay the case while the parties work out the final issues in settlement. This would allow the parties to focus on achieving settlement rather than expending time, energy and money on unnecessary litigation. We appreciate the fact that the U.S. has held off on service to date, and request that the U.S. continue to refrain from serving the summons and complaint unless the unlikely event occurs that settlement discussions have broken down.

Let's discuss the above next week at your convenience.

Sincerely,

[original signed by]

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